

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

CHEVRON U.S.A., INC., et al.,

Plaintiffs,

VS.

**A. RANDAL REITZ and
DEBRA K. REITZ,**

Defendants.

8:09CV203

FINDINGS AND RECOMMENDATION

This matter is before the undersigned magistrate judge *sua sponte*. The undersigned magistrate judge entered an order requiring the plaintiffs to show cause why this action should not be dismissed pursuant to [Fed. R. Civ. P. 4\(m\)](#). **See** [Filing No. 11](#). The plaintiffs did not file a response. For the reasons set forth below, the undersigned magistrate judge will recommend the plaintiffs' complaint be dismissed without prejudice.

BACKGROUND

The plaintiffs filed the complaint in this matter on June 22, 2009. **See [Filing No. 1](#)**. The plaintiffs have never sought summonses and no summonses have been issued. Although the plaintiffs sought and received leave to serve by publication in July, there is no indication the plaintiffs ever effected service of the summons and the complaint upon the defendants. On October 28, 2008, the undersigned magistrate judge entered an order requiring the plaintiffs to show cause why this action should not be dismissed pursuant to **[Fed. R. Civ. P. 4\(m\)](#)**. **See [Filing No. 11](#)**. The plaintiffs have not filed a response to the show cause order.

ANALYSIS

Federal Rule of Civil Procedure 4(m) provides:

If a defendant is not served within 120 days after the complaint is filed, the court--on motion or on its own after notice to the plaintiff--must dismiss the action without prejudice against that defendant or order that service be made within a specified

time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

See [Fed. R. Civ. P. 4\(m\)](#). The Eighth Circuit has long held dismissal for failure to prosecute is well within the court's discretion. See [Roberts v. Missouri Div. Of Employment](#), 636 F.2d 249, 250 (8th Cir. 1980). Dismissal without prejudice is appropriate when service of the summons and complaint has not been made upon the defendant within 120 days after filing of the complaint. See [Fed. R. Civ. P. 4\(m\)](#); [Bullock v. United States](#), 160 F.3d 441, 442 (8th Cir. 1998) (per curiam) (affirming district court's dismissal without prejudice under Rule 4(m)); see also [Carmona v. Ross](#), 376 F.3d 829, 830 (8th Cir. 2004) (dismissal affirmed where plaintiff given opportunity, but failed to cure defect).

In this case, the plaintiffs have failed to effect service of summons and the complaint upon the defendants in accordance with Rule 4(m). The plaintiffs have provided the court with no explanation for the failure to serve the defendants. The plaintiffs have not complied with the court's order to show cause why the action should not be dismissed. The plaintiffs have acted in a manner that interferes with the orderly processes of this court. The undersigned magistrate judge finds the plaintiffs' failure to prosecute this action interferes with the orderly administration of justice. Upon consideration,

IT IS RECOMMENDED TO CHIEF JUDGE JOSEPH F. BATAILLON that:

The plaintiffs' complaint ([Filing No. 1](#)) be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 4(m).

ADMONITION

Pursuant to [NECivR](#) 72.3 any objection to these Findings and Recommendation shall be filed with the Clerk of the Court within ten (10) business days after being served with a copy of these Findings and Recommendation. Failure to timely object may constitute a waiver of any objection. The brief in support of any objection shall be filed at

the time of filing such objection. Failure to file a brief in support of any objection may be deemed an abandonment of the objection.

Dated this 12th day of November, 2009.

BY THE COURT:

s/Thomas D. Thalken
United States Magistrate Judge

*This opinion may contain hyperlinks to other documents or Web sites. The U.S. District Court for the District of Nebraska does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide on their Web sites. Likewise, the court has no agreements with any of these third parties or their Web sites. The court accepts no responsibility for the availability or functionality of any hyperlink. Thus, the fact that a hyperlink ceases to work or directs the user to some other site does not affect the opinion of the court.